



Rules and Ancillary Document Review Checklist

Document Reviewed (include title): **WAC 458-20-102 Resale Certificates**

Date last adopted: **June 6, 1994**

Reviewer: **PAT MOSES**

Date review completed: **May 3, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

- ♦ **Sales are considered retail sales unless the seller takes a properly executed resale certificate from the buyer, in which case the sale is considered to be wholesaling. Retail sales normally require collection of the retail sales tax. Sales tax is not due on a wholesale sale. This rule is intended to help buyers and sellers accurately identify and sufficiently document their wholesale sales. The rule helps taxpayers avoid the consequences of misusing the resale certificate (subject to a 50% penalty) or failing to collect/pay the retail sales tax on retail sales.**

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)



Please explain.

- ♦ **WAC 458-20-102 is necessary to promote appropriate collection/payment of sales tax by taxpayers and provide agency personnel with a clear, consistent measure to use in determining when a transaction should be considered wholesaling in nature.**

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete

Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
	X	Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

The following document contains information that should be incorporated into a rule.

- ♦ **17 WTD 69 (1998) – A business may not purchase property without payment of retail sales tax, even though it rebills its customer for use of the property, if the business does not relinquish possession, dominion and control of the property to the customer. This information should actually be incorporated into the next revision of WAC 458-20-178 (Use tax).**

4. Clarity and Effectiveness:

YES	NO	
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X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

- ◆ **This rule is relied upon by taxpayers and departmental staff to determine sales taxability and to promote consistency.**
- ◆ **This rule is written in a clear and concise manner. There are few, if any, administrative decisions (WTDs) or other decisions relating to this rule even though it addresses a significant subject (proper handling of wholesale sales). This indicates that the rule is reasonable, clear, and to the point.**

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

- ◆ **RCW 82.32.300 authorizes the Department of Revenue to make and publish rules.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?



Please explain.

- ♦ **The Department has exclusive authority for administering the business & occupation and retail sales taxes. The subject matter of Rule 102 is the specific domain of the Department of Revenue.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

- ♦ **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by the law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

- ♦ **The retail sales tax is the primary tax for Washington State. Failure to properly collect or remit sales tax and misuse of a resale certificate can incur significant penalties. This rule helps taxpayers collect sales tax when it is due and avoid unnecessary penalties by giving specific instructions and examples. The rule also promotes consistent and fair application of the related statutes on the part of DOR staff.**

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **The following statutes are implemented to the extent they apply to purchases for resale and the requirements of the resale certificate:**

- ♦ **RCW 82.04.050 “Sale at retail,” “retail sale.”**
- ♦ **RCW 82.04.220 Business and occupation tax imposed.**
- ♦ **RCW 82.04.270 Tax on wholesalers, distributors.**



- ◆ **RCW 82.04.470 Resale certificate—Burden of proof—Tax liability—Rules—Resale certificate defined.**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- ◆ **ETA 114/08.12.102 INTERVENING USE OF ARTICLES HELD FOR RESALE**

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Administrative Decisions (e.g., WTDs):

- ◆ **13 WTD 369 (1994) – A feedlot which fattens its own cattle for longer than sixty days before selling them at wholesale may give resale certificates for purchases of feed.**
- ◆ **14 WTD 029 (1994) – Disposable items that are unfit for use beyond the first use may be purchased at wholesale, where the items are solely for use by and/or are ordered by the customers.**
- ◆ **17 WTD 69 (1998) – An owner of fiber-optic cable may not purchase the cable without payment of retail sales tax even though it rebills its customers for use of the cable when the owner does not relinquish possession and dominion and control of the cable to its customers.**
- ◆ **17 WTD 179 (1998) – The receipt of a resale certificate more than three years after completion of a project will not be accepted by the Department.**
- ◆ **17 WTD 359 – The owner’s consumption of products that were originally purchased for resale results in the owner being liable for retail sales tax on the purchases.**
- ◆ **18 WTD 73 – When a contractor’s customers use the contractor’s resale certificate to purchase materials and/or labor for use in home construction and pay the vendors directly, the contractor is liable for retail sales tax on those transactions if the customers fail to pay retail sales tax to the vendors.**

Attorney General’s Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- ◆ **Departmental Publication – “Information on Washington’s Tax Structure – Resale**
- ◆ **Tax Topics #39, October through December 1996 – “Use of Resale Certificates by Out of**



♦ Tax Facts, April 1998, “How long should I keep resale certificates?”

10. Review Recommendation:

- ☐ Amend
- ☐ Repeal
- ☒ Leave as is
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you’ve identified/recommended earlier in this review document.)

The rule is correct as is. No significant changes in law have occurred for this topic since the rule’s last revision in 1994. ETA 114 exists as an ancillary document, but the information is more appropriate for and should be incorporated in WAC 458-20-178 (Use tax). 17 WTD 69 (1998) contains information that the Department should consider adding when Rule 102 is next revised, but there is no need to revise this rule at this time.

11. Manager action: Date: _____

- ☐ Reviewed recommendation ☐ Accepted recommendation
- ☐ Returned for further action

Comments: